IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Revision No. 407 of 1993
Date of Decision: 4.7.2007

Ramesh.

..... Petitioner through
Shri H.S.Gill, Senior
Advocate with Shri

Versus

State of Haryana.

..... Respondent through
Ms.Shalini Attri, Assistant
Advocate General, Haryana.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Mahesh Grover,J.

The petitioner has preferred this revision petition against judgment dated 2.7.1993 of the Additional Sessions Judge, Hisar dismissing his appeal against judgment dated 23.7.1992 passed by the Judicial Magistrate Ist Class, Siwani vide which he was convicted and sentenced to undergo rigorous imprisonment for three months under Section 279 of the I.P.C. and for two years and to pay fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for two months, under Section 304-A of the I.P.C.

On 17.3.1990, the petitioner is alleged to have struck his truck

bearing registration no.HYD-3231 against a scooter carrying two persons, namely, Raj Kumar and Rama Nand killing them in the process. The occurrence is said to have taken place at 2.30 P.M. on Rajgarh- Siwani road in the district of Hisar. Allegedly, the incident was witnessed by one Raj Kumar son of Hardwari lal, resident of village Dhandhala, who incidentally was at the spot after coming back from the fields of Phula Ram where he had gone to fetch drinking water. According to him, he had come back after quenching his thirst and was accompanied by Phula Ram when he saw Raj Kumar son of Basti Ram coming on a scooter from the side of Siwani with Rama Nand on the pillion. The truck in question came from the side of Rajgarh being driven rashly and negligently and by coming on its wrong side, struck the scooter and dragged the same to some distance. Raj Kumar and Rama Nand were seriously injured and died at the spot. The driver made good his escape from the scene leaving the truck. After leaving Phula Ram at the spot, he started for police station and came across Same Ram, A.S.I. at Tosham, who recorded his statement on the basis of which, a formal F.I.R. was recorded.

The petitioner was arrested on 20.3.1990 and he is said to have produced registration certificate of the truck and his driving licence before the A.S.I., who was the Investigating Officer from the truck itself, which were taken into possession vide a recovery memo. The mechanical examination of the truck was got conducted and the spot was photographed. A rough site plan of the place of occurrence was also got prepared and the statements of the witnesses were recorded.

After completion of investigation, challan was presented

against the petitioner for facing trial under Sections 279 and 304-A of the I.P.C.

The petitioner pleaded not guilty to the charge that was framed against him and claimed trial.

The prosecution examined as many as eight witnesses in all and closed its evidence.

In his statement under Section 313 of the Cr.P.C., the petitioner pleaded innocence, but did not lead any evidence in this regard.

The learned Magistrate went on to convict the petitioner and sentenced him in the manner as aforestated.

The appeal filed by the petitioner against the conviction and sentence has been dismissed by the learned Sessions Judge.

Learned counsel for the petitioner contended that no creditable evidence has been produced by the prosecution to establish the guilt of the petitioner. The evidence of eye witness – PW1, Raj Kumar, is hardly worth credence and PW5-Phula Ram, who is said to have been accompanying him at the relevant time, has not testified to the effect that Raj Kumar had come to his fields to take water or that Raj Kumar had seen the accident. Even Raj Kumar has testified that he was not familiar with the driver of the truck and had seen him in the Court for the first time after nine months. In this view of the fact, it was imperative for the prosecution to establish the identity of the petitioner by resorting to test identification parade which was not done. That apart, it was contended that the Investigating Officer had not been examined causing a serious dent in the case of the prosecution.

Learned counsel appearing for the State could not effectively

rebut the contentions raised by the learned counsel for the petitioner.

I have heard the learned counsel for the parties at some length.

The entire prosecution case rests on the evidence of PW1-Raj Kumar, who is alleged to be the eye witness. If the presence of Raj Kumar was to be accepted, then it was essential for the prosecution to get the test identification of the petitioner done, especially when he had fled and had been arrested after a period of three days and the prosecution had an opportunity at that point of time to establish his identity. Concededly, the eye witness was not familiar with the petitioner and there is no explanation forth-coming as to how he was able to establish the identity of the petitioner in the Court as the person who had caused the accident. The evidence of PW1, the alleged eyed witness, is, therefore, uninspiring.

However, a perusal of the photographs, which are on record as Exhibits P1 to P14, leaves on room for doubt in so far as the identity of the truck which had caused the accident is in question. In this view of the matter, it was also imperative upon the petitioner, who had set up the plea of false implication, to categorically state so in his statement under Section 313 of the Cr.P.C. A defence which is raised by the accused person regarding his non-involvement has to be specifically stated in the statement so recorded under Section 313 of the Cr.P.C. Mere denial of his involvement is no reflection on the plea of defence sought to be raised. Since the petitioner was categorically denying the fact that he was driving the vehicle, such defence should have been reflected in his statement under Section 313 of the Cr.P.C.by expressing it in as many words. The presence of the truck and its involvement not being in doubt, there is very little room

to disbelieve the prosecution version regarding the fact of the petitioner being on the wheel at the time of occurrence, especially in view of the weak and half-hearted plea of defence raised by him in his statement under Section 313 of the Cr.P.C..

Consequently, there is no merit in the revision petition which is dismissed.

At this stage, learned counsel for the petitioner contended that the occurrence is of the year 1990 and no fruitful purpose would be served by sending the petitioner to serve the remaining sentence after lapse of 17 years. Learned counsel further contended that instead of sending the petitioner to jail, he may be burdened with some amount to be paid as compensation to the families of the deceased persons. In support of his contention, he placed reliance on the judgments of this Court in Bhupinder Singh Versus State of Punjab, 2006(1) R.C.R.(Criminal) 725; Lakhwinder Dass Versus State of Punjab, 2006(1) R.C.R. (Criminal) 825 and Ram Pal Versus State of Punjab, 2006(1) R.C.R. (Criminal) 784.

I have carefully considered the contentions of the learned counsel for the petitioner in the backdrop of the aforesaid.

Having regard to the fact that the occurrence is of the year 1990 and 17 years have elapsed since then and also considering the fact that the petitioner would be well advanced in age by now, I am of the opinion that ends of justice would be squarely met if the petitioner is directed to pay a sum of Rs.30,000/- to each of the families of the deceased persons instead of sending him to jail. Ordered accordingly. The conviction of the petitioner shall remain intact and the sentence awarded to him is reduced to that

already undergone subject to his depositing the aforesaid amount with the learned Magistrate within three months from today. On his doing so, the learned Magistrate shall disburse the amount to the legal heirs of the deceased persons as compensation after due notice, enquiry and verification. In case, the petitioner fails to deposit the stipulated amount within the prescribed period, the sentence awarded by the learned Magistrate shall sustain and he will be required to undergo the remaining period of imprisonment after cancelling his bail bonds.

July 04,2007 **(Mahesh Grover)**
"SCM" **Judge**